120

Corres. and Mail
BOX AF

Resp. under 37 CFR 1.116
EXPED PROC
1

RESPONSE UNDER 37 CFR 1.116
EXPEDITED PROCEDURE
EXAMINING GROUP 3641

AF
3641

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor : Mitchell R. Swartz

Serial no. 09/ 750,765

Filed: 12/28/00

For: **METHOD AND APPARATUS TO CONTROL ISOTOPIC FUEL LOADED WITHIN A MATERIAL**

This is a continuation of Serial no. 07/ 760,970

Group Art Unit: 3641

Examiner: Mr. Palabrica, R.J.

2nd Response (1.E)
5/4/04
Holmes

April 21, 2004

To Whom it Does Concern:

Office of the Clerk
Board Of Patent Appeals
c/o The Commissioner for Patents
Alexandria, VA 22313-1450

RESPONSE TO COMMUNICATION BY EXAMINER and NOTICE OF COMPLIANCE BY APPELLANT

1. The Appellant has received from the Office a notification regarding the Appeal Brief dated March 31, 2004 which is unsigned, a copy of notification is attached hereto (Exhibit "A"). In response to said Office notification (Exhibit "A"), this "Response to Communication by Examiner and Notice of Compliance by Appellant", hereinafter called Response will demonstrate that all matters cited by the Office have already been addressed and corrected in the now-submitted revised Appeal Brief. Said Response will also demonstrate that said matters were already addressed in the Appellant's previously submitted "Notice of Compliance". Said Response also addresses all inaccurate statements in the Office notification.

The Office's First False Statement

2. The Office's Communication inaccurately states,

"The reply filed on 1/7/04 is not responsive to the 12/30/03 Office Action because the deficiencies cited regarding the Appeal Brief dated 10/28/03 have not been properly or totally corrected."

THE TRUTH - The Appellant Responded

This statement by the Examiner is disingenuous. Any and all purported deficiencies made by the Examiner in the previous communication were addressed and corrected properly or totally. In fact, the Appellant was totally compliant before, and is totally compliant now (as will be discussed below). Attention of the Court and Board is directed to the simple fact that all matters were both resolved and discussed by the Appellant. Unfortunately, said previous response by the Appellant was once again simply ignored by the Examiner, leading to the disingenuous sentence cited above.

For example, first, the Office's previous notification stated, "*a. The statement of the Status of Claims is inconsistent with Appendix A (Claims Involved in the Appeal). Claims 11 and 20 are not listed in the Status Of Claims but they are listed in Appendix A.*" Appellant corrected this misprint in Appendix A. **Therefore, the Appellant complied and was responsive.**

Second, the Office's previous notification stated, "*b. The statement of Status of Amendments is confusing because it appears to refer to the original claim 5, instead of an amended claim 5*". Appellant disputed the Examiner that this is confusing. Nonetheless, Appellant complied and corrected this by adding the word "amended" exactly where the Examiner demanded. **Therefore, the Appellant complied and was responsive.**

Third, the Office's previous notification stated, "*c. The Summary of Invention is improper because it includes subject matter not found in the disclosure (e.g. see page 4, 2nd paragraph which is not recited in the Abstract).*" The Examiner was mistaken because these lines are in the original disclosure of the above-entitled application on page 3, lines 1 through 4. Nonetheless to comply with the Examiner, the offending paragraph is now deleted. **Therefore, the Appellant complied and was responsive.**

Fourth, the Office's previous notification stated, "*d. The recitation and scope of Issues is improper because it does not conform to MPEP 1206. For example, applicant does not specify the basis of the alleged unpatentability of the claims. An example of a proper way of phrasing an issue is as follows: 'Whether claims 1-20 are unpatentable under 35 U.S.C. 112, first paragraph, based on a nonenabling disclosure.*" The

Examiner was wrong for eight (8) reasons, listed and discussed in detail (but ignored by the Examiner). In addition, the Appellant conformed with the Examiner's suggestions and rewrote the Issues. **Therefore, the Appellant complied and was responsive.**

Fifth, the Office's previous notification stated, "*Other examples of impropriety include: a) associating operability of the claimed invention with 35 U.S.C. 112 1st and 2nd paragraphs issues*". The Examiner was wrong for nine reasons, listed and discussed in detail (but ignored by the Examiner). In addition, there is no mention of operability of the claimed invention in the argument paragraphs of the 35 U.S.C. 112 2nd paragraphs issues. Appellant respectfully disputed this because utility and USC 101 are not discussed on page 22 of the Appeal Brief, except through enablement. **Therefore, the Appellant complied and was responsive.**

Sixth, The Office's previous notification stated, "*b) improperly including terms not relevant to the grounds of rejection used by the examiner, e.g., 1.192q6)(v)' statements on "disingenuous claim by the Office" etc..*" The Examiner was wrong for six reasons, listed and discussed in detail (but ignored by the Examiner). So as to fully comply with the Examiner, the Appellant corrected this and removed the Issues which offended the Office about the "United States Constitution", despite Appellant's civil rights thus clearly violated. **Therefore, the Appellant complied and was responsive.**

Seventh, the Office's previous notification stated, "*e. The statement on Grouping of Claims is improper because it includes arguments as to why claims 1, 4 and 5 (sic) distinguish and limit the invention. These arguments should be in the Argument section*". The Examiner was wrong for six reasons, listed and discussed in detail (but ignored by the Examiner). The independent claims discussed in the Grouping of Claims is not "claims 1, 4 and 5" as the Examiner purports, but Claims 1, 4 and 13. As Appellant stated, as follows in the Appeal Brief,

> **"Claim 1 distinguishes and limits the invention, in a process for producing a product using a material which is electrochemically loaded with an isotopic fuel, to a method of controlling the loading which includes in combination, loading said isotopic fuel into said material, then providing means for producing a change in the quantity of said isotopic fuel within said material, creating thereby a catastrophic diffusion flux of said isotopic fuel within said material, providing a diffusion barrier to said diffusion flux of said isotopic fuel within said material, and thereby producing said product.**
>
> **Claim 4 distinguishes and limits the invention, in a process using an isotopic fuel loaded into a material, to a two-stage method for controlling the loading which includes in combination loading said isotopic fuel into said material, then providing means for producing a change in the quantity of said isotopic fuel within said material, creating thereby a catastrophic diffusion flux of said isotopic fuel within said material.**

Claim 13 distinguishes and further limits the invention to an apparatus to produce a product using a material loaded with an isotopic fuel, which includes in combination means to load said isotopic fuel into said material, means to produce a change in the quantity of said isotopic fuel within said material, means to produce a catastrophic diffusion flux of said isotopic fuel within said material, means thereby to produce said product."
Therefore, the Appellant complied and was responsive.

Eighth, the Office's previous notification stated, "The Grouping of Claims section states that "*the appealed claims do not stand or fall together." However there is no discussion in the Arguments section as to why EACH claim is considered separately patentable*." The Examiner was wrong for six reasons, listed and discussed in detail (but ignored by the Examiner). Despite the disingenuous statement of the Examiner, it is explicitly discussed on page 22 of the Argument section for 35 U.S.C. 112 (first paragraph), and then on page 92 of the Argument section for 35 U.S.C. 112 (second paragraph), and then on page 99 of the Argument section for 35 U.S.C. 102, and then on page 127 of the Argument section for 35 U.S.C. 101. In addition is was discussed on page 21. In addition, to please the Examiner and the Office, the Appellant corrected this, as requested, yet again. **Therefore, the Appellant complied and was responsive.**

Ninth, the Office's previous notification stated, *"f. Applicant's contentions in the Arguments section are improper. Examples of impropriety include: a) issues of operability and utility are improperly associated in arguments regarding the 35 U.S.C. 112, 1st paragraph rejection (see page 22 of the Brief)*". The Examiner was wrong for seven reasons, listed and discussed in detail (but ignored by the Examiner). First, utility and USC 101 are not discussed on page 22 of the Appeal Brief. Second, for ten years the Office has cited "operability" pursuant to 35 U.S.C, 112, first paragraph issues. All of a sudden, the Office's previous arguments that were reasonably consistent over more than a decade in this matter, apparently were changed suddenly without any clear substantive explanation, authority, exhibit, or basis for the paroxysmal change - despite repeated requests. **Therefore, the Appellant complied and was responsive.**

Tenth, the Office's previous notification stated, *"c) claims rejected under 35 U.S.C 112, 2nd paragraph are not correctly identified (e.g., see item 75, page 92)*". The Appellant in careful detail demonstrated that the claims were correctly identified. The Appeal Brief says: "73..... all Claims 1-10, 12-19, 21, and 22 rejected under 35 U.S.C. 112 " below a heading of "**ARGUMENT REGARDING 35 USC §112 SECOND PARAGRAPH**". Therefore, the questions is "Were claims 1-10, 12-19, 21, and 22 rejected under 35 U.S.C. 112 second paragraph?". Exhibit "B" was

presented to show the Examiner the he previously wrote that "claims 1-10, 12-19, 21, and 22 rejected under 35 U.S.C. 112 second paragraph" in his rejection on page 27. Therefore, as the Examiner knows, in fact, the claims were stated correctly AND that the Appellant responded, but the Examiner did not. **Therefore, the Appellant complied and was responsive.**

Eleventh, the Office's previous notification stated, "*b) arguments regarding 35 U.S.C. 112, 2nd paragraph, improperly discusses 35 U.S.C. 102(b) rejection of claims (e.g. see page: 92)*". The Appellant in careful detail demonstrated that the Examiner was incorrect. The Board and Examiner were directed to the fact that the record demonstrates that the Appellant had appealed on the Issue of "definiteness". Therefore, the Appellant is entitled to bring up an argument regarding the rejection of Claims 1-10, 12-19, 21 and 22 under 35 U.S.C. 112 second paragraph which states, -- as Appellant notes to the Board -- "... there has to have been definiteness with respect to the present invention because it is a Continuation and because the Examiner could not have made the previous rejections under 35 U.S.C. 102 had the invention truly been without definiteness." The Examiner knows that the Appellant responded, but the Examiner did not. **Therefore, the Appellant complied and was responsive.**

Twelfth, the Office's previous notification stated, "*d) claims rejected as being anticipated by Kinsella under 35 U.S.C. 102(b) are not correctly identified (e.g., see item 95, page 110).*" The Appellant has corrected this and noted,

> **Appellant suggests that the Examiner has said this "tongue-in-cheek" and to put the Appellant through another "hoop" because although the Applicant did make a misprint here and used "Claims 1, 2, 4, 5, 7, 10, 13, 15 and 16 have been rejected under 35 U.S.C. 102 (b) as being anticipated by Kinsella (U.S. 3,682, 806)" instead of "Claims 1, 2, 4, 5, 7, 10, 13, 15 and 16 and 21 have been rejected under 35 U.S.C. 102 (b) as being anticipated by Kinsella (U.S. 3,682, 806)". However, as the Examiner knows, in fact, in the important summary page on 141 of the Appeal Brief, the Appellant stated this correctly. This demand of the Examiner is inconsistent with the U.S. Supreme Court, which has ruled that any *pro se* litigant is entitled to less stringent standards [U.S. Rep volume 404, pages 520-521 (72)].**

The Examiner knows that the Appellant responded, but the Examiner did not. **Therefore, the Appellant complied and was responsive.**

Thirteenth, the Office's previous notification stated, " *claims that have not been rejected, such as claims 11 and 20, are improperly included in the list."* Appellant corrected this misprint. **Therefore, the Appellant complied and was responsive.**

Fourteen, the Office's previous notification stated, *"The purpose of Appendix B is unclear. Applicant should either properly relate this Appendix to his arguments or delete it."* Appellant noted that Dr. Mallove's quotes from Appendix B were cited in context on pages 28 through 29 and 129 through 130 in the Appeal Brief. The Examiner missed this. In addition, the Appellant corrected this for the Examiner. The Examiner knows that the Appellant responded, but the Examiner did not. **Therefore, the Appellant complied and was responsive.**

Here then are fourteen (14) ways Appellant responded and/or complied. And to these 14 changes and/or responses, the Examiner has done nothing except to disingenuously pretend that there has been no response. Instead of allowing the Board in its own wisdom to resolve the important matter involving the Applicant's invention and civil rights, and now involving US security, the Examiner --fully aware that the Appellant responded-- with tongue deep-in-cheek pretends that Appellant did not. However, the record, the previous Notification, and this present Response with the accompanying Declarations, do palpably affirm otherwise. **The Appellant complied and was responsive.**

Given the above, the Applicant hereby again requests to know the substantive precise reason, scientific basis, and authority which allows the Examiner to dismiss the Appellant's previous fourteen responses without a single citation, or substantive coherent response.

The Office's Second False Statement

3. The Office's Communication inaccurately states,

"1. Claims 1-10, 12-19, 21 and 22 have been rejected. Applicant states in the Grouping of Claims Section that the "appealed claims do not stand or fall together." However, there is still' no discussion in the Arguments section of why EACH claim is considered separately patentable. For example:"

THE TRUTH - The Appellant Responded

The Examiner is disingenuous about the Appeal Brief. The independent claims have been fully discussed in the Arguments section, and there is a specific reason why EACH independent claim is present. The Examiner knows this. The citations were given in Appellant's previous Notification explicitly. Instead of honesty, the Examiner is disingenuous and elects to be unresponsive to Applicant's arguments even though they were fully discussed in significant detail in the previous Communication from the Applicant to the Examiner. For example, in said Notice or Communication, the Applicant took the time to respond to the Examiner and wrote the following comments.

"10. ... there is discussion in the Arguments section .... it is explicitly discussed on page 22 of the Argument section for 35 U.S.C. 112 (first paragraph), and then on page 92 of the Argument section for 35 U.S.C. 112 (second paragraph), and then on page 99 of the Argument section for 35 U.S.C. 102, and then on page 127 of the Argument section for 35 U.S.C. 101. In addition is was discussed on page 21.

Second Appellant respectfully disputes this because there is discussion in the Arguments section of why EACH claim is considered separately patentable.

Third, as Appellant stated,

"Claim 1 distinguishes and limits the invention, in a process for producing a product using a material which is electrochemically loaded with an isotopic fuel, to a method of controlling the loading which includes in combination, loading said isotopic fuel into said material, then providing means for producing a change in the quantity of said isotopic fuel within said material, creating thereby a catastrophic diffusion flux of said isotopic fuel within said material, providing a diffusion barrier to said diffusion flux of said isotopic fuel within said material, and thereby producing said product."

Claim 4 distinguishes and limits the invention, in a process using an isotopic fuel loaded into a material, to a two-stage method for controlling the loading which includes in combination loading said isotopic fuel into said material, then providing means for producing a change in the quantity of said isotopic fuel within said material, creating thereby a catastrophic diffusion flux of said isotopic fuel within said material.

Claim 13 distinguishes and further limits the invention to an apparatus to produce a product using a material loaded with an isotopic fuel, which includes in combination means to load said isotopic fuel into said material, means to produce a change in the quantity of said isotopic fuel within said material, means to produce a catastrophic diffusion flux of said isotopic fuel within said material, means thereby to produce said product."

Fourth, judiciary economy is important, and Appellant did not want to repeat each portion discussed on page 21 an additional four times. However, to please the Examiner and the Office, the Appellant has corrected this, as requested."

["Appellant's Notice to the Board", dated 1/4/04]

Attention is now directed to the fact that said comments in Applicant's Communication have simply been ignored by the Examiner. The Examiner did not cite Applicant's arguments presented in detail. Nor did he discuss Applicant's arguments. Nor did he rebut Applicant's arguments. Therefore it is absolutely impossible to tell how the Examiner weighed Applicant's arguments. Because the Examiner was requested to answer and respond with specificity, the Examiner has apparently ignored the Office rules, and expectations of reasonable people. Therefore, given the above, the Applicant hereby again requests to know the substantive precise reason, scientific basis, or authority which allows the Examiner to dismiss this Argument by the

Applicant without citation, analysis, or substantive coherent response. Specifically, the Applicant hereby requests to know the basis which allows the Examiner to dismiss the Argument that,

"10. ... there is discussion in the Arguments section .... it is explicitly discussed on page 22 of the Argument section for 35 U.S.C. 112 (first paragraph), and then on page 92 of the Argument section for 35 U.S.C. 112 (second paragraph), and then on page 99 of the Argument section for 35 U.S.C. 102, and then on page 127 of the Argument section for 35 U.S.C. 101. In addition is was discussed on page 21."

Therefore, given the above, the Applicant hereby again requests to know the substantive precise reason, scientific basis, or authority which allows the Examiner to dismiss this Argument by the Applicant without citation, analysis, or substantive coherent response -- other than his desire to deny an American the protection afforded by the US Constitution, by the laws passed by the US Congress, and which are inherent to the applicant involving both right to due process and consistent standard of review. The Applicant is disappointed that expense, effort, diligence are ignored in submitted documents which were received by the Examiner - but ignored with an unfounded, improper, and egregious attack on the Appellant.

Fifth, there is no basis for the examiner's demand. Historically, this case and docket is such that the present above-entitled invention is a continuation of the previous application, which was before the Board of patent appeal and before the federal court. In that docket (S.N. ' 970) of which the present above entitled application is a continuation, neither the Board nor court had any problem. Instead the Examiner has created bogus issues and fabricated new demands to obstruct the appellant from presenting his appeal brief to the Board of patent Appeal.

Sixth, the Examiner's new demands have no basis in authority or law or precedent on a general basis. The appellant has previously responded, and it is the examiner who has failed to respond in his unsigned communication which ignores the appellants submitted (and received) notification of compliance and new appeal brief's.

Seventh, the Examiners new demands are inconsistent with the normal standards of review. The standard of review in this Case includes the fact that the examiner suddenly demands that the appellant right separate responses for each of the key pending claims whereas the law requires and the standards of review consists out, appellants who dealt with the independent claims.

Eighth, the examiners new demands are unnecessary, and clearly have been made only to obstruct justice and deny the Board access to an Appeal.

The Office's Third False Statement

4. The Office's Communication inaccurately states,

"a. As to the rejections under 35 U.S.C. 112, 1st paragraph, Applicant provides arguments only for claims 1, 4 and 13. No separate, claim-specific arguments are presented for each one of claims 2, 3, 5-10, 12, 14-19, 21 and 22 (see page 21 of the Appeal Brief)."

THE TRUTH - The Appellant Responded

The Examiner is incorrect for several reasons.First, the Examiner is disingenuous about the Appeal Brief. The independent claims have been fully discussed in the Arguments section, and there is a specific of why EACH claim is present. For example, in said Notice or Communication, the Applicant took the time to respond to the Examiner and wrote the following comments.

"The Office is wrong ... it is explicitly discussed on page 22 of the Argument section for 35 U.S.C. 112 (first paragraph)."

["Appellant's Notice to the Board", dated 1/4/04]

Attention is now directed to the fact that said comments in Applicant's Communication have simply been ignored by the Examiner. The Examiner did not cite Applicant's arguments presented in detail. Nor did the Examiner discuss Applicant's arguments. Nor did the Examiner rebut Applicant's arguments. Therefore it is absolutely impossible to tell how the Examiner weighed Applicant's arguments. Because the Examiner was requested to answer and respond with specificity, the Examiner has apparently ignored the Office rules, and expectations of reasonable people. Therefore, given the above, the Applicant hereby again requests to know the substantive precise reason, scientific basis, or authority which allows the Examiner to dismiss this Argument by the Applicant without citation, analysis, or substantive coherent response. Specifically, the Applicant hereby requests to know the basis which allows the Examiner to dismiss the Argument that,

"(This) is explicitly discussed on page 22 of the Argument section for 35 U.S.C. 112 (first paragraph)") NO!

Therefore, given the above, the Applicant hereby again requests to know the substantive precise reason, scientific basis, or authority which allows the Examiner to dismiss this Argument by the Applicant without citation, analysis, or substantive coherent response -- other than Mr. Palabrica's desire to deny an American the protection afforded by the US Constitution, by the laws passed by the US Congress, and which are inherent to the applicant involving both right to due process and consistent standard of review.

The Applicant is disappointed that expense, effort, diligence are ignored in submitted documents which were received by the Examiner - but ignored with an unfounded, improper, and egregious attack on the Appellant.

Second, there is no basis for the examiner's demand. Historically, this case and docket is such that the present above-entitled invention is a continuation of the previous application, which was before the Board of patent appeal and before the federal court. In that docket (S.N. ' 970) of which the present above entitled application is a continuation, neither the Board nor court had any problem. Instead the Examiner has created bogus issues and fabricated new demands to obstruct the appellant from presenting his appeal brief to the Board of patent Appeal.

Third, the Examiner's new demands have no basis in authority or law or precedent on a general basis. The appellant has previously responded, and it is the examiner who has failed to respond in his unsigned communication which ignores the appellants submitted (and received) notification of compliance and new appeal brief's.

Fourth the examiners new demands are inconsistent with the normal standards of review. The standard of review in this Case includes the fact that the examiner suddenly demands that the appellant write out separate responses for each of the dependent claims whereas the law requires and the standards of review consist of, appellants having only to deal with the independent claims.

Fifth, the Examiner castigates the Appellant for repeating things, but is attempting to trick to Appellant into stating almost the same thing over and over.

Sixth, the examiners new demands are unnecessary and made only to obstruct justice. The examiner continues to be unreasonable, inaccurate, and apparently not on the same page as either the security of United States or the empowerment of United States citizens secondary to article 1 section 8.

The Office's Fourth False Statement

5. The Office's Communication inaccurately states,

"b. As to the rejections under 35 U.S.C. 112, 2nd paragraph, Applicant provides arguments only for claims 1, 4 and 13. In fact, the arguments for these rejections are mere repetitions of the arguments for the 35 U.S.C., 1st paragraph rejections. No separate, claim-specific arguments are presented for each one of claims 2, 3, 5-10, 12, 14-19, 21 and 22 (see page 92 of the Appeal Brief)."

THE TRUTH - The Appellant Responded

The Examiner is disingenuous about the Appeal Brief. The independent claims have been fully discussed in the Arguments section, and there is a specific of why EACH claim is present. The Examiner knows this. The citations were given in Appellant's previous Notification explicitly. Instead of honesty, the Examiner is disingenuous and elects to be unresponsive to Applicant's arguments even though they were fully discussed in significant detail in the previous Communication from the Applicant to the Examiner. For example, in said Notice or Communication, the Applicant took the time to respond to the Examiner and wrote the following comments.

"The Office is wrong ... it is explicitly discussed ... on page 92 of the Argument section for 35 U.S.C. 112 (second paragraph)"
["Appellant's Notice to the Board", dated 1/4/04]

Attention is now directed to the fact that said comments in Applicant's Communication have simply been ignored by the Examiner. The Examiner did not cite Applicant's arguments presented in detail. Nor did the Examiner discuss Applicant's arguments. Nor did the Examiner rebut Applicant's arguments. Therefore it is absolutely impossible to tell how the Examiner weighed Applicant's arguments. Because the Examiner was requested to answer and respond with specificity, the Examiner has apparently ignored the Office rules, and expectations of reasonable people. Therefore, given the above, the Applicant hereby again requests to know the substantive precise reason, scientific basis, or authority which allows the Examiner to dismiss this Argument by the Applicant without citation, analysis, or substantive coherent response. Specifically, the Applicant hereby requests to know the basis which allows the Examiner to dismiss the Argument that,

"The Office is wrong ... it is explicitly discussed ... on page 92 of the Argument section for 35 U.S.C. 112 (second paragraph)"

Therefore, given the above, the Applicant hereby again requests to know the substantive precise reason, scientific basis, or authority which allows the Examiner to dismiss this Argument by the Applicant without citation, analysis, or substantive coherent response -- other than Mr. Palabrica's desire to deny an American the protection afforded by the US Constitution, by the laws passed by the US Congress, and which are inherent to the applicant involving both right to due process and consistent standard of review.

The Applicant is disappointed that expense, effort, diligence are ignored in submitted documents which were received by the Examiner - but ignored with an unfounded, improper, and egregious attack on the Appellant.

The Office's Fifth False Statement

6. The Office's Communication inaccurately states,

"c. As to the rejections under 35 U.S.C. 102, Applicant provides arguments only for claims 1, 4 and 13. In fact, the arguments for these rejections are mere repetitions of the arguments for the 35 U.S.C., 1st paragraph rejections. No separate, claim-specific arguments are presented for each one of claims 2, 3, 5-10, 12, 14-19, 21 and 22 (see page 100 of the Appeal Brief"

THE TRUTH - The Appellantresponded

The Examiner is disingenuous about the Appeal Brief. The independent claims have been fully discussed in the Arguments section, and there is a specific of why EACH claim is present. The Examiner knows this. The citations were given in Appellant's previous Notification explicitly. Instead of honesty, the Examiner is disingenuous and elects to be unresponsive to Applicant's arguments even though they were fully discussed in significant detail in the previous Communication from the Applicant to the Examiner. For example, in said Notice or Communication, the Applicant took the time to respond to the Examiner and wrote the following comments.

"The Office is wrong ... it is explicitly discussed ... on page 99 of the Argument section for 35 U.S.C. 102"

["Appellant's Notice to the Board", dated 1/4/04]

Attention is now directed to the fact that said comments in Applicant's Communication have simply been ignored by the Examiner. The Examiner did not cite Applicant's arguments presented in detail. Nor did the Examiner discuss Applicant's arguments. Nor did the Examiner rebut Applicant's arguments. Therefore it is absolutely impossible to tell how the Examiner weighed Applicant's arguments. Because the Examiner was requested to answer and respond with specificity, the Examiner has apparently ignored the Office rules, and expectations of reasonable people. Therefore, given the above, the Applicant hereby again requests to know the substantive precise reason, scientific basis, or authority which allows the Examiner to dismiss this Argument by the Applicant without citation, analysis, or substantive coherent response. Specifically, the Applicant hereby requests to know the basis which allows the Examiner to dismiss the Argument that,

"The Office is wrong ... it is explicitly discussed ... on page 99 of the Argument section for 35 U.S.C. 102"

Therefore, given the above, the Applicant hereby again requests to know the substantive precise reason, scientific basis, or authority which allows the Examiner to dismiss this Argument by the Applicant without citation, analysis, or substantive coherent response -- other than Mr. Palabrica's desire to deny an American the protection afforded by the US Constitution, by the laws passed by the US Congress, and which are inherent to the applicant involving both right to due process and consistent standard of review.

The Applicant is disappointed that expense, effort, diligence are ignored in submitted documents which were received by the Examiner - but ignored with an unfounded, improper, and egregious attack on the Appellant.

The Office's Sixth False Statement

7. The Office's Communication inaccurately states,

"d. As to the rejections under 35 U.S.C. 101, Applicant provides arguments only for claims 1, 4 and 13. In fact, the arguments for these rejections are mere repetitions of the arguments for the 35 U.S.C., 1St paragraph rejections. No separate, claim-specific arguments are presented for each one of claims 2, 3, 5-10, 12, 14-19, 21 and 22 (see page 131 of the Appeal Brief)."

The Examiner is disingenuous about the Appeal Brief. The independent claims have been fully discussed in the Arguments section, and there is a specific of why EACH claim is present. The Examiner knows this. The citations were given in Appellant's previous Notification explicitly. Instead of honesty, the Examiner is disingenuous and elects to be unresponsive to Applicant's arguments even though they were fully discussed in significant detail in the previous Communication from the Applicant to the Examiner. For example, in said Notice or Communication, the Applicant took the time to respond to the Examiner and wrote the following comments.

"The Office is wrong .... it is explicitly discussed .... on page 127 of the Argument section for 35 U.S.C. 101."

["Appellant's Notice to the Board", dated 1/4/04]

Attention is now directed to the fact that said comments in Applicant's Communication have simply been ignored by the Examiner. The Examiner did not cite Applicant's arguments presented in detail. Nor did the Examiner discuss Applicant's arguments. Nor did the Examiner rebut Applicant's arguments. Therefore it is absolutely impossible to tell how the Examiner weighed Applicant's arguments. Because the Examiner was requested to answer and respond with specificity, the Examiner has apparently ignored the Office rules, and expectations of reasonable people.

Therefore, given the above, the Applicant hereby again requests to know the substantive precise reason, scientific basis, or authority which allows the Examiner to dismiss this Argument by the Applicant without citation, analysis, or substantive coherent response. Specifically, the Applicant hereby requests to know the basis which allows the Examiner to dismiss the Argument that,

"The Office is wrong .... it is explicitly discussed .... on page 127 of the Argument section for 35 U.S.C. 101."

Therefore, given the above, the Applicant hereby again requests to know the substantive precise reason, scientific basis, or authority which allows the Examiner to dismiss this Argument by the Applicant without citation, analysis, or substantive coherent response -- other than Mr. Palabrica's desire to deny an American the protection afforded by the US Constitution, by the laws passed by the US Congress, and which are inherent to the applicant involving both right to due process and consistent standard of review.

The Applicant is disappointed that expense, effort, diligence are ignored in submitted documents which were received by the Examiner - but ignored with an unfounded, improper, and egregious attack on the Appellant.

The Office's Seventh False Statement

8. The Office's Communication inaccurately states,

"2. The Grouping of Claims section is improper because it includes arguments as to why claims 1, 4 and 13 distinguish and limit the invention. As stated in the 12/3/03 Office Action, these arguments should be in the Arguments section. See MPEP 1206, "Appeal Brief", for guidance on the content for this section."

THE TRUTH - The Appellant Responded

The Appellant has followed and the arguments are in the Arguments section. This was discussed in the previous (ignored) Notice to the Examiner. The Applicant hereby again requests to know the substantive precise reason, scientific basis, or authority which allows the Examiner to dismiss this Argument by the Applicant without citation, analysis, or substantive coherent response. Specifically, the Applicant hereby requests to know the basis which allows the Examiner to dismiss the Argument that,

"10. ... there is discussion in the Arguments section .... it is explicitly discussed on page 22 of the Argument section for 35 U.S.C. 112 (first paragraph), and then on page 92 of the Argument section for 35 U.S.C. 112 (second paragraph), and then on page 99 of the Argument section for 35 U.S.C. 102, and then on page 127 of the Argument section for 35 U.S.C. 101. In addition is was discussed on page 21."

The Applicant is disappointed that expense, effort, diligence are ignored in submitted documents which were received by the Examiner - but ignored with an unfounded, improper, and egregious attack on the Appellant.even though they were fully discussed in significant detail in the previous Communication from the Applicant to the Examiner.

The Office's Eighth False Statement

9. The Office's Communication inaccurately states,

"3. Contrary to the allegation on page 9 of "Notice of Compliance by Appellant," applicant has not corrected the error cited in Section f, item d) of the 12/30/03 Office Action (see item 75, page 93 of the Appeal Brief).

"The claims referred to by the Applicant in said item 75 are still incorrect because they are not the claims rejected by the Examiner in the 3/20/03 Final Office Action Therefore, the arguments presented by the Applicant in this section of the Appeal Brief are non-responsive to the claim rejections because they address the wrong claims."

THE TRUTH - The Appellant Responded

The Examiner has been unresponsive to Applicant's arguments even though they were fully discussed in significant detail in the previous Communication from the Applicant to the Examiner. The Appellant in careful detail demonstrated that the claims were correctly identified. The Appeal Brief says: "73..... all Claims 1-10, 12-19, 21, and 22 rejected under 35 U.S.C. 112 " below a heading of "**ARGUMENT REGARDING 35 USC §112 SECOND PARAGRAPH**". Therefore, the questions is "Were claims 1-10, 12-19, 21, and 22 rejected under 35 U.S.C. 112 second paragraph?". Exhibit "B" was presented to show the Examiner the he previously wrote that "claims 1-10, 12-19, 21, and 22 rejected under 35 U.S.C. 112 second paragraph" in his rejection on page 27. Therefore, as the Examiner knows, in fact, the claims were stated correctly AND that the Appellant responded, but the Examiner did not. **Therefore, the Appellant complied and was responsive.**

The Office's Ninth False Statement

10. The Office's Communication states,

"4. Contrary to the allegation on page 10 of "Notice of Compliance by Appellant," applicant has not corrected Appendix A. Claim 19, as recited, still does not include the term "active" before "quantity"."

THE TRUTH - The Appellant Responded

The Examiner is again directed to the record.

In Applicant's October 22, 2002 missive to the Examiner (before Final), on pages 10 and 100 the deletion of the word "active" without prejudice was made and noted. This is shown on pages 100 [Exhibit "B"] and shown is it was discussed on page 10, among others, in response to the Examiner's comments and requests.

Once again, it appears that the Examiner wants to be able to attack the Applicant (now Appellant), ignore the record, ignore the science, and hope the Office will condone continued obstruction of justice. Exhibit "B" demonstrates that the word active in claim 19 was deleted and the Examiner is without foundation, as he has been without response to Applicant's comments (*vide supra, vide infra*).

The Office's Tenth False Statement

11. The Office's Communication purports,

"5. The purpose of Appendix B is still unclear, e.g., the ZerAEpoint letter."

THE TRUTH - The Appellant Responded

Once again, the Examiner has been unresponsive to Applicant's arguments even though they were fully discussed in significant detail in the previous Communication from the Applicant to the Examiner. For example, in said Communication, the Applicant took the time to respond to the Examiner and wrote the following comments.

"17. The Examiner states,

"The purpose of Appendix B is unclear. Applicant should either properly relate this Appendix to his arguments or delete it."

THE TRUTH - Appendix B Was Quoted In The Text In Two Place

Appellant thanks the Examiner for this careful detail, but the Appellant notes that Dr. Mallove's quotes from Appendix B were cited in context on pages 28 through 29 and 129 through 130 in the Appeal Brief. Perhaps the Examiner missed this, and therefore, the Appellant has corrected this for the Examiner."

["Appellant's Notice to the Board", dated 1/4/04]

Attention is now directed to the fact that said comments in Applicant's Communication have simply been ignored by the Examiner. May the Court and Board note that once again, the Examiner did not cite Applicant's arguments, nor did the Examiner discuss Applicant's arguments, nor did the Examiner rebut Applicant's arguments. Therefore it is impossible to tell how the Examiner weighed Applicant's arguments. Because the Examiner was requested to answer and respond with specificity, the Examiner has apparently ignored the Office rules, and expectations of reasonable people.

Therefore, given the above, the Applicant hereby again requests to know the substantive precise reason, scientific basis, or authority which allows the Examiner to dismiss this Argument by the Applicant without citation, analysis, or substantive coherent response. Specifically, the Applicant hereby requests to know the basis which allows the Examiner to dismiss the Argument that,

"Dr. Mallove's quotes from Appendix B were cited in context on pages 28 through 29 and 129 through 130 in the Appeal Brief. "

Therefore, given the above, the Applicant hereby again requests to know the substantive precise reason, scientific basis, or authority which allows the Examiner to dismiss this Argument by the Applicant without citation, analysis, or substantive coherent response.

The Office's Eleventh False Statement

12. The Office's Communication inaccurately states,

"Since the above deficiencies have been listed in the 12/30/03 Office Action, Applicant's failure to correct them is no longer considered inadvertent."

THE TRUTH - The Appellant Responded

This statement by the Examiner is disingenuous. The above deficiencies were not listed in the 12/30/03 Office Action. Furthermore, any and all purported deficiencies made by the Examiner in the previous communication were addressed and corrected. In fact, the Appellant was totally compliant before, and is totally compliant now (as will be discussed below). Attention of the Court and Board is directed to the simple fact that all matters were both resolved and discussed by the Appellant. Unfortunately, said previous response by the Appellant was once again simply ignored by the Examiner, leading to the disingenuous sentence cited above.

For example, first, the Office's previous notification stated, "*a. The statement of the Status of Claims is inconsistent with Appendix A (Claims Involved in the Appeal). Claims 11 and 20 are not listed in the Status Of Claims but they are listed in Appendix A.*" Appellant corrected this misprint in Appendix A. **Therefore, the Appellant complied and was responsive.**

Second, the Office's previous notification stated, "*b. The statement of Status of Amendments is confusing because it appears to refer to the original claim 5, instead of an amended claim 5*". Appellant disputed the Examiner that this is confusing. Nonetheless, Appellant complied and corrected this by adding the word "amended" exactly where the Examiner demanded. **Therefore, the Appellant complied and was responsive.**

Third, the Office's previous notification stated, "*c. The Summary of Invention is improper because it includes subject matter not found in the disclosure (e.g. see page 4, 2nd paragraph which is not recited in the Abstract).*" The Examiner was mistaken because these lines are in the original disclosure of the above-entitled application on page 3, lines 1 through 4. Nonetheless to comply with the Examiner, the offending paragraph is now deleted. **Therefore, the Appellant complied and was responsive.**

Fourth, the Office's previous notification stated, "*d. The recitation and scope of Issues is improper because it does not conform to MPEP 1206. For example, applicant does not specify the basis of the alleged unpatentability of the claims. An example of a proper way of phrasing an issue is as follows: 'Whether claims 1-20 are unpatentable under 35 U.S.C. 112, first paragraph, based on a nonenabling disclosure.*" The Examiner was wrong for eight (8) reasons, listed and discussed in detail (but ignored by the Examiner). In addition, the Appellant conformed with the Examiner's suggestions and rewrote the Issues. **Therefore, the Appellant complied and was responsive.**

Fifth, the Office's previous notification stated, "*Other examples of impropriety include: a) associating operability of the claimed invention with 35 U.S.C. 112 1st and 2nd paragraphs issues*". The Examiner was wrong for nine reasons, listed and discussed in detail (but ignored by the Examiner). In addition, there is no mention of operability of the claimed invention in the argument paragraphs of the 35 U.S.C. 112 2nd paragraphs issues. Appellant respectfully disputed this because utility and USC 101 are not discussed on page 22 of the Appeal Brief, except through enablement. **Therefore, the Appellant complied and was responsive.**

Sixth, The Office's previous notification stated, "*b) improperly including terms not relevant to the grounds of rejection used by the examiner, e.g., 1.192q6)(v)' statements on "disingenuous claim by the Office" etc..*" The Examiner was wrong for six reasons, listed and discussed in detail (but ignored by the Examiner). So as to fully comply with the Examiner, the Appellant corrected this and removed the Issues which offended the Office about the "United States Constitution", despite Appellant's civil rights thus clearly violated. **Therefore, the Appellant complied and was responsive.**

Seventh, the Office's previous notification stated, "*e. The statement on Grouping of Claims is improper because it includes arguments as to why claims 1, 4 and 5 (sic) distinguish and limit the invention. These arguments should be in the Argument section*". The Examiner was wrong for six reasons, listed and discussed in detail (but ignored by the Examiner). The independent claims discussed in the Grouping of Claims is not "claims 1, 4 and 5" as the Examiner purports, but Claims 1, 4 and 13. As Appellant stated, as follows in the Appeal Brief,

> **"Claim 1 distinguishes and limits the invention, in a process for producing a product using a material which is electrochemically loaded with an isotopic fuel, to a method of controlling the loading which includes in combination, loading said isotopic fuel into said material, then providing means for producing a change in the quantity of said isotopic fuel within said material, creating thereby a catastrophic diffusion flux of said isotopic fuel within said**

material, providing a diffusion barrier to said diffusion flux of said isotopic fuel within said material, and thereby producing said product.

Claim 4 distinguishes and limits the invention, in a process using an isotopic fuel loaded into a material, to a two-stage method for controlling the loading which includes in combination loading said isotopic fuel into said material, then providing means for producing a change in the quantity of said isotopic fuel within said material, creating thereby a catastrophic diffusion flux of said isotopic fuel within said material.

Claim 13 distinguishes and further limits the invention to an apparatus to produce a product using a material loaded with an isotopic fuel, which includes in combination means to load said isotopic fuel into said material, means to produce a change in the quantity of said isotopic fuel within said material, means to produce a catastrophic diffusion flux of said isotopic fuel within said material, means thereby to produce said product."

Therefore, the Appellant complied and was responsive.

Eighth, the Office's previous notification stated, "The Grouping of Claims section states that "*the appealed claims do not stand or fall together." However there is no discussion in the Arguments section as to why EACH claim is considered separately patentable.*" The Examiner was wrong for six reasons, listed and discussed in detail (but ignored by the Examiner). Despite the disingenuous statement of the Examiner, it is explicitly discussed on page 22 of the Argument section for 35 U.S.C. 112 (first paragraph), and then on page 92 of the Argument section for 35 U.S.C. 112 (second paragraph), and then on page 99 of the Argument section for 35 U.S.C. 102, and then on page 127 of the Argument section for 35 U.S.C. 101. In addition is was discussed on page 21. In addition, to please the Examiner and the Office, the Appellant corrected this, as requested, yet again. **Therefore, the Appellant complied and was responsive.** Why does the Examiner NEVER have to respond?

Ninth, the Office's previous notification stated, *"f. Applicant's contentions in the Arguments section are improper. Examples of impropriety include: a) issues of operability and utility are improperly associated in arguments regarding the 35 U.S.C. 112, 1st paragraph rejection (see page 22 of the Brief)*". The Examiner was wrong for seven reasons, listed and discussed in detail (but ignored by the Examiner). First, utility and USC 101 are not discussed on page 22 of the Appeal Brief. Second, for ten years the Office has cited "operability" pursuant to 35 U.S.C, 112, first paragraph issues. All of a sudden, the Office's previous arguments that were reasonably consistent over more than a decade in this matter, apparently were changed suddenly without any clear substantive explanation, authority, exhibit, or basis for the paroxysmal change - despite repeated requests. **Therefore, the Appellant complied and was responsive.**

Tenth, the Office's previous notification stated, *"c) claims rejected under 35 U.S.C 112, 2nd paragraph are not correctly identified (e.g., see item 75, page 92)"*. The Appellant in careful detail demonstrated that the claims were correctly identified. The Appeal Brief says: "73..... all Claims 1-10, 12-19, 21, and 22 rejected under 35 U.S.C. 112 " below a heading of **"ARGUMENT REGARDING 35 USC §112 SECOND PARAGRAPH"**. Therefore, the questions is "Were claims 1-10, 12-19, 21, and 22 rejected under 35 U.S.C. 112 second paragraph?". Exhibit "B" was presented to show the Examiner the he previously wrote that "claims 1-10, 12-19, 21, and 22 rejected under 35 U.S.C. 112 second paragraph" in his rejection on page 27. Therefore, as the Examiner knows, in fact, the claims were stated correctly AND that the Appellant responded, but the Examiner did not. **Therefore, the Appellant complied and was responsive.**

Eleventh, the Office's previous notification stated, *"b) arguments regarding 35 U.S.C. 112, 2nd paragraph, improperly discusses 35 U.S.C. 102(b) rejection of claims (e.g. see page: 92)"*. The Appellant in careful detail demonstrated that the Examiner was incorrect. The Board and Examiner were directed to the fact that the record demonstrates that the Appellant had appealed on the Issue of "definiteness". Therefore, the Appellant is entitled to bring up an argument regarding the rejection of Claims 1-10, 12-19, 21 and 22 under 35 U.S.C. 112 second paragraph which states, -- as Appellant notes to the Board -- "... there has to have been definiteness with respect to the present invention because it is a Continuation and because the Examiner could not have made the previous rejections under 35 U.S.C. 102 had the invention truly been without definiteness." The Examiner knows that the Appellant responded, but the Examiner did not. **Therefore, the Appellant complied and was responsive.**

Twelfth, the Office's previous notification stated, *"d) claims rejected as being anticipated by Kinsella under 35 U.S.C. 102(b) are not correctly identified (e.g., see item 95, page 110)."* The Appellant has corrected this and noted,

> **Appellant suggests that the Examiner has said this "tongue-in-cheek" and to put the Appellant through another "hoop" because although the Applicant did make a misprint here and used "Claims 1, 2, 4, 5, 7, 10, 13, 15 and 16 have been rejected under 35 U.S.C. 102 (b) as being anticipated by Kinsella (U.S. 3,682, 806)" instead of "Claims 1, 2, 4, 5, 7, 10, 13, 15 and 16 and 21 have been rejected under 35 U.S.C. 102 (b) as being anticipated by Kinsella (U.S. 3,682, 806)". However, as the Examiner knows, in fact, in the important summary page on 141 of the Appeal Brief, the Appellant stated this correctly. This demand of the Examiner is inconsistent with the U.S. Supreme Court, which has ruled that any *pro se* litigant is entitled to less stringent standards [U.S. Rep volume 404, pages 520-521 (72)].**
>
> The Examiner knows that the Appellant responded, but the Examiner did not.

Therefore, the Appellant complied and was responsive.